

# Exhibit 17

1 Page 1

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

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Jonathan R., minor, by Next :  
Friend, Sarah Dixon, et al., :  
Plaintiffs, : Class Action  
v. : 3:19-cv-00710  
Jim Justice, in his official :  
capacity as the Governor of :  
West Virginia, et al., :  
Defendants. :  

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VIDEOCONFERENCE DEPOSITION OF JANET FLORY  
DATE: October 23, 2020  
TIME: 9:01 a.m. to 2:59 p.m.  
LOCATION: Witness Location

REPORTED BY: Felicia A. Newland, CSR

Veritext Legal Solutions  
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Washington, D.C. 20005

<p style="text-align: right;">Page 66</p> <p>1 if there are concerns about the safety or the risk 2 of harm to a child, you're leaving that child in 3 that situation until you decide or until somehow 4 these reports came to some conclusion.</p> <p>5 Q So when you say "for any reasonable 6 professional standard not in good practice," is 7 that based on your experience?</p> <p>8 A Absolutely.</p> <p>9 Q Is that based -- go ahead.</p> <p>10 A And it's also based on -- in every 11 state, in every jurisdiction, there are specific 12 regulations about the length of time that cases 13 should take and different actions within an 14 investigation of a case, how long they should take.</p> <p>15 Q And what are West Virginia's 16 regulations on that?</p> <p>17 A I'm not recalling exactly, but I did 18 have that -- it -- it's within -- it certainly is 19 not seven or eight months apart, but it's within 20 reasonable lengths of time. And there are 21 different -- there are different time frames for 22 different pieces of the report of an investigation.</p>	<p style="text-align: right;">Page 68</p> <p>1 incidents to try to reconstruct what had happened 2 to a particular child. That's how I ended up 3 making sense of it.</p> <p>4 Q Would it have been helpful for you to 5 interview the caseworkers involved in these cases?</p> <p>6 A That would have been another dynamic 7 or another element of what we were asked to do.</p> <p>8 Q Did you ask if you could speak with 9 any caseworkers?</p> <p>10 A I'm sorry, am I frozen or are you 11 frozen?</p> <p>12 Q I think you're frozen on my screen.</p> <p>13 MS. MAHONEY: Yes, you're frozen on 14 my screen as well.</p> <p>15 THE WITNESS: Am I -- is it me? Can 16 you hear me?</p> <p>17 MS. SMITH: I can hear you now.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MS. MAHONEY: Can you repeat the 20 question, please?</p> <p>21 BY MS. SMITH:</p> <p>22 Q I had asked if it would be helpful</p>
<p style="text-align: right;">Page 67</p> <p>1 Q So you didn't have any concerns with 2 West Virginia's regulations in this area?</p> <p>3 A They seemed in line with other 4 systems that I am aware of.</p> <p>5 Q So your concerns are whether or not 6 those regulations were complied with?</p> <p>7 I'm sorry. You just froze, I'm not 8 sure --</p> <p>9 A Yes. Yes, to that specific issue, 10 timelines were not adhered to. But I think in this 11 theme, we also talk about the state of the records 12 themselves, it was very, very difficult to piece 13 together the different elements of an investigation 14 or conclusions of a report. It was impossible in 15 most of these cases to follow along and to 16 understand what the trajectory and what the time 17 frames and what the compliance was.</p> <p>18 Q So despite that it was almost 19 impossible to do so, you were still able to draw 20 these conclusions from the case file?</p> <p>21 A Personally, I had stickies all over 22 my bedroom wall with the dates of specific</p>	<p style="text-align: right;">Page 69</p> <p>1 for you to interview caseworkers to help you figure 2 out what went on in this case. And I didn't hear, 3 I think you had said -- just -- you cut out when 4 you answered that question.</p> <p>5 A Okay. Interviewing caseworkers would 6 have added another dynamic to this report that 7 is -- that was beyond the scope of what we were 8 asked to do. I -- I would say because I have -- 9 it's -- it was clear to me that if a caseworker 10 were looking at these records, a new caseworker 11 assigned to a case as I did, they would have great, 12 great difficulty figuring out what the history was 13 and what the trajectory of a family was within the 14 system as well.</p> <p>15 Q And did you -- did you -- strike 16 that.</p> <p>17 So are you aware of how West Virginia 18 caseworkers review case records in their day-to-day 19 work?</p> <p>20 A Specifically, no, I am not aware of 21 how that happens. I can -- I could only see how 22 the record was organized or not organized that I</p>

1 reviewed. 2 Q So you don't know how the records are 3 organized for the West Virginia caseworkers? 4 A No, I do not. I do know that at 5 least in two of the cases, a great number of 6 documents were dumped into the system that I 7 reviewed at the end of last year. I don't know 8 what the West Virginia SACWIS system looks like, I 9 only know what I saw. 10 Q So you don't know if the organization 11 of the records as the West Virginia caseworker 12 reviews it, you don't know if it's different than 13 how you reviewed it? 14 MS. MAHONEY: Objection. Asked and 15 answered. 16 THE WITNESS: Well, maybe this is not 17 politic to say, but if what the caseworker sees is 18 different and the organization of the record is 19 different than what we saw, I would wonder why we 20 saw it in the state that we saw it and whether that 21 was perhaps deliberate or not. 22	Page 70	1 one report or one placement were not in one 2 place. 3 BY MS. SMITH: 4 Q Are you aware that you were looking 5 at screenshots from West Virginia's FACTS system? 6 A Oh, yes. 7 Q So you were not actually accessing 8 the system as the case -- as the West Virginia 9 caseworkers access them? 10 MS. MAHONEY: Objection. 11 THE WITNESS: I can't know that. 12 Sorry. 13 BY MS. SMITH: 14 Q Did you access the system on 15 plaintiffs' document review platform? 16 A Yes. 17 Q Okay. I'd like to turn to the next 18 theme, which is also on page 8. It says, "The 19 reviewed cases demonstrated a lack of information 20 from key collateral sources that resulted in weak 21 investigations" -- 22 MS. MAHONEY: Ms. Smith, you're	Page 72
1 BY MS. SMITH: 2 Q Well, have you worked with SACWIS 3 systems in your prior roles? 4 A I have. 5 Q And how are case files organized in 6 those systems? 7 MS. MAHONEY: Objection. Relevance. 8 THE WITNESS: It depends very much on 9 the state and the -- and you may or may not know 10 that SACWIS systems have evolved and devolved and 11 revolved over the last 20 or 30 years, but most 12 case systems, whether SACWIS or some combination of 13 SACWIS and hard-copy case records, have some sense 14 of organization to them: Here are the 15 investigations, here are the placement, here's the 16 placement history, here are the assessments that 17 have been done. 18 One can pull that out and look at 19 it and see what has happened from -- from the 20 time that the case came in until the current 21 time. These records were totally disorganized. 22 Even the -- even -- all the records related to	Page 71	1 breaking up pretty bad. 2 MS. SMITH: Is that better? 3 MS. MAHONEY: It is. 4 BY MS. SMITH: 5 Q Okay. So what's the foundation for 6 this theme? 7 A The reviews that showed the lack of 8 using key collateral sources. There were -- and we 9 go through some of the examples here. In -- in 10 Anastasia, which happened to be one of my cases, 11 doctors and school personnel did -- and this was in 12 the record, they pointed out the abuse, they 13 pointed out patterns. There was no attempt or no 14 recording of any work to try to reconcile what they 15 were saying versus what the adoptive mother was 16 saying. 17 In another case, collaterals are 18 listed on the screenshots. But that's all. 19 There's no information about any interviews, about 20 any way in which they were used to -- to really 21 understand what was going on in the case situation. 22 Q So I understand that it's -- that	Page 73

<p style="text-align: right;">Page 102</p> <p>1 pillars, of how this system is built and what the 2 expectations are.</p> <p>3 BY MS. SMITH:</p> <p>4 Q And how would you see examples of 5 this in a child's case record?</p> <p>6 A Repeated reports of some -- some form 7 of neglect or abuse that appears on the face of it 8 to stem from either the child's behavior or the 9 parent's behavior and ability to parent that child 10 that may -- based on knowledge about mental health, 11 may relate back to mental illness. And then seeing 12 no sort of assessment or recognition of that and 13 closing the case with no further action about it 14 until the next time that you see it.</p> <p>15 And in at least one instance, one 16 case, the parent was accessing lots of mental 17 health evaluation treatment, but it wasn't 18 effective at all. And I think, in general, we did 19 not see the spectrum, if you thought about the 20 continuum of the kinds of interventions that can 21 happen with children and with their parents in the 22 mental health area, we did not see a range of</p>	<p style="text-align: right;">Page 104</p> <p>1 A Both, but more pre-placement.</p> <p>2 Q So this theme is actually in the 3 permanency section, so do you -- what's your 4 opinion about how DHHR failed to understand the 5 debilitating effect of mental illness relating to 6 post-placement services?</p> <p>7 A Well, not many of these kids are 8 post-placement, frankly -- or I -- well, 9 post-placement -- I'm sorry. Let me back up.</p> <p>10 This really gets into the question of 11 the appropriateness of the placements and the kind 12 of mental health services that were available or 13 not available. And the overuse of psychiatric 14 hospitalizations certainly is one piece of that, 15 but this is also -- this particular statement, when 16 a child is in placement as long as the goal is 17 reunification of the family, there's a 18 responsibility to provide the appropriate services 19 to the family, the parents, so that the child can 20 go back home. And I think that's more of the issue 21 here.</p> <p>22 Q And what's your understanding of the</p>
<p style="text-align: right;">Page 103</p> <p>1 different options or resources available to -- to 2 these cases.</p> <p>3 Q And how would you expect to see those 4 options reflected in a case record?</p> <p>5 A From both the assessment that was 6 going on about the family, about the nature of the 7 report that came in and then the services, the 8 range of services that was being provided to either 9 the parents or the child, if whatever was 10 appropriate.</p> <p>11 There was an overreliance on 12 psychiatric hospitalization and long lengths of 13 stay in psychiatric hospitals, which in many places 14 these days, the attempt is to use that only as a 15 diagnostic and a very short-term intervention. I 16 didn't see any day-treatment efforts or programs.</p> <p>17 I mean, this -- this deals with 18 perhaps the question that you raised earlier about 19 what is available in West Virginia in terms of the 20 system.</p> <p>21 Q And are you talking about 22 pre-placement services?</p>	<p style="text-align: right;">Page 105</p> <p>1 availability of those services in West Virginia?</p> <p>2 A My understanding is only to the 3 extent that I reviewed case records and could see 4 what happened and what didn't happen with the kids 5 that we reviewed.</p> <p>6 Q And so you're talking about what 7 happened or didn't happen in your review of the 8 three case records?</p> <p>9 MS. MAHONEY: Objection. Asked and 10 answered.</p> <p>11 THE WITNESS: Yeah, I'm specifically 12 talking about that, but this was a -- an 13 observation that all three of us saw in all -- in 14 the nine cases that we reviewed.</p> <p>15 BY MS. SMITH:</p> <p>16 Q Okay. And do you -- is it your -- do 17 you think that the case record can show a failure 18 to understand? Is that right?</p> <p>19 MS. MAHONEY: Objection.</p> <p>20 BY MS. SMITH:</p> <p>21 Q The failure to understand a 22 debilitating effect of mental illness?</p>

	Page 122	
<p>1 BY MS. SMITH:</p> <p>2 Q So on page 18 it says, "DHHR failed 3 to utilize least restrictive family-like placement 4 for children." Is that something that's required 5 in DHHR policy?</p> <p>6 A Yes.</p> <p>7 Q And did you conclude that DHHR failed 8 to use the least restrictive family-like placements 9 for the three case files that you reviewed?</p> <p>10 A In two instances, absolutely, yes. 11 In one instance there were -- in the middle of 12 Dennis' ten placements, did have placements with 13 his grandparents, but it was both long after he had 14 been removed and then they were not -- they did not 15 end up being the permanent placement for him.</p> <p>16 Q So is it -- is it your opinion that 17 the caseworkers violated DHHR policy with respect 18 to the least restrictive placement for those three 19 case files that you reviewed?</p> <p>20 A Yes.</p> <p>21 Q And what does -- how do -- what does 22 least restrictive mean?</p>	Page 124	<p>1 the length of stay.</p> <p>2 Q And do you know what percentage of 3 foster children in West Virginia are in kinship 4 placement?</p> <p>5 A I do not.</p> <p>6 Q Do you know what percentage of foster 7 children in West Virginia are in foster family 8 settings?</p> <p>9 A I do not.</p> <p>10 Q Are you aware that the West Virginia 11 Circuit Court has to make a -- has to order 12 child -- children to residential placements in the 13 least restrictive finding?</p> <p>14 MS. MAHONEY: Objection.</p> <p>15 THE WITNESS: Yes, in general, I am 16 aware of that.</p> <p>17 BY MS. SMITH:</p> <p>18 Q So you disagree with those court 19 orders?</p> <p>20 MS. MAHONEY: Objection.</p> <p>21 Mischaracterizes testimony.</p> <p>22 THE WITNESS: Well, court orders are</p>
	Page 123	
<p>1 A Least restrictive means just what it 2 says in the federal law. When a child is removed 3 from his or her own family, the system has an 4 obligation to find the most family-like least 5 restrictive setting possible. And if you look at 6 the continuum of placements, kinship would be the 7 most family-like because presumably the children 8 know the kin that they're living with.</p> <p>9 A regular foster home would be a 10 little bit more restrictive but still a family-like 11 setting. Therapeutic foster homes. And then you 12 go on up until you reach the far end of the 13 spectrum, which would be residential placement in 14 psychiatric hospitalization.</p> <p>15 Q And can residential placements in a 16 psychiatric hospital ever be a least restrictive 17 placement?</p> <p>18 A Ever be what? I'm sorry.</p> <p>19 Q Ever be a least restrictive placement 20 for a child?</p> <p>21 A In some limited instances for limited 22 periods of time. It's not just the setting, it's</p>	Page 125	<p>1 generally the result of a department's assessment 2 and recommendation to the court. It is the 3 department's responsibility to do that work, not 4 the court's.</p> <p>5 BY MS. SMITH:</p> <p>6 Q But the court doesn't have to go 7 along with the recommendation?</p> <p>8 MS. MAHONEY: Objection.</p> <p>9 THE WITNESS: I'm sorry. Yes, of 10 course, they can override.</p> <p>11 BY MS. SMITH:</p> <p>12 Q Let's go to the next theme on page 13 21. It says, "DHHR failed to adequately address 14 child specific placement needs."</p> <p>15 So does this -- what reasonable 16 professional standard does this theme relate to?</p> <p>17 MS. MAHONEY: Objection. Asked and 18 answered.</p> <p>19 THE WITNESS: There are several 20 standards that this relates to. One is that a plan 21 should always be specific to a child in his or her 22 own specific needs as much as possible. A second</p>